



# CHAPTER I: INTRODUCTION

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## A. Need for Action

Victims of child abuse and neglect come before magistrate judges for protection from further harm and for timely decision-making regarding their future. In response, judges make critical legal decisions and oversee social service efforts to rehabilitate and maintain families, or to provide permanent alternative care for child victims. These oversight responsibilities require a large portion of the court's attention, workload and resources as the reported number of child abuse and neglect cases grows each year.

Public awareness of the tragedy of physical and sexual abuse of children has led to a recent explosion in court referrals. The problem has been exacerbated by poverty, the impact of drug-exposed mothers and infants, HIV Syndrome, the continuing dissolution of the family unit, and the growing recognition that child victims are often found in violent families. Throughout the United States, child abuse and neglect proceedings in the juvenile and family courts have been transformed by new demands placed upon the courts. These demands have included escalating judicial caseloads, increasingly difficult cases, and a significant new role assigned to juvenile and family courts in abuse and neglect cases.

In the 1970s, juvenile and family courts were expected only to determine whether a child had been abused or neglected and, if so, whether the child needed to be removed from home or placed under court or agency supervision. At present, however, courts are expected to make sure a safe, permanent, and stable home is secured for each abused or neglected child. This change has been brought about by major federal foster care reform legislation, the Adoption Assistance and Child Welfare Act of 1980 and major revisions in state laws.

As a result of recent changes in federal law such as the enactment of the Adoption and Safe Families Act<sup>1</sup>, and significant revisions in Idaho's Child Protection Act<sup>2</sup>, Idaho courts must take a more active role in decision-making in abuse and neglect cases. More complex issues are now decided in each case, more hearings are held, and many more persons are involved. To perform their expanded oversight role, courts need to understand how IDHW operates and what services are available in the community for endangered children and their families.

<sup>1</sup> Pub. L. 105-89, Nov. 19, 1997, 111 Stat. 2115.

<sup>2</sup> Idaho Code § 16-1601 *et seq.*

**B. Key Principles**

In response to the emerging crisis in the area of child protection, the Idaho Supreme Court convened the Committee to Reduce Delay for Children in Foster Care – now called the Child Protection Committee. The committee, under the leadership of the Honorable Bryan Murray, is studying the best way to improve Idaho court processes in the child protection area. The committee is comprised of diverse membership including representatives from the courts, prosecutors, public defenders, private attorneys, health and welfare, private social workers, juvenile corrections, and legal education.

With the support of federal court improvement funding, the committee conducted an extensive study of the child protection system in Idaho. Surveys were sent to large groups of stakeholders and live focus group meetings were held in a number of locations throughout the state. A consultant was hired to evaluate the data that was gathered and to make recommendations to the courts based on the study results. In addition, the committee has examined the child protection system in other states. The committee continues to monitor the child protection system throughout the state by reviewing pilot projects and through committee representation from every judicial district in the state.

The work of the Idaho Supreme Court has been informed by the requirements of the federal Adoption and Safe Families Act, and also by resolutions of the Conference of Chief Justices and the Conference of State Court Administrators.<sup>3</sup>

The committee's work has been guided by the following principles.

**1. Avoid Unnecessary Separation of Children and Families**

Consistent with child safety, families should be preserved, reunified, and strengthened so they can successfully rear their children. Judges must use their legal authority to ensure that social and protective services are immediately available to families whose children have been placed at risk of abuse or neglect so that parents have a fair opportunity to become competent and safe caretakers. The services should be easily accessible, adequate, appropriate and delivered in a culturally competent framework. The child's family, barring insurmountable safety issues, is usually the first choice for permanency.

**2. Make Timely Decisions in Child Abuse and Neglect Cases**

For children, the prolonged uncertainty of not knowing whether they will be removed from home, whether and when they will return home, when they might be moved to another foster home, or whether and when they may be placed in a new permanent home is frightening. This uncertainty can seriously and permanently damage a child's development of trust and security. Courts must use tight case flow management practices, including full and complete knowledge at the earliest possible point in the court proceeding. This is often referred to as "front-loading" the system and includes practices such as early identification and

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<sup>3</sup> The Conference of Chief Justices and the Conference of State Court Administrators adopted a resolution at their annual meeting in August, 2001 encouraging the use of the Adoption and Permanency Guidelines proposed by the National Council of Family and Juvenile Court Judges. This manual has been substantially adapted from the NCJFCJ Guidelines, with their permission.

involvement of fathers and other relatives, as well as early voluntary involvement of the family in remedial services. Other important caseflow management practices include credible court dates with tight control over continuances and rapid distribution of the court's orders to all parties. These practices avoid unnecessary delays in the court process.

### **3. Implement Procedures to Identify and Comply with Indian Child Welfare Act**

Delays for children can often be caused because the child is not identified as an Indian child, Indian Child Welfare Act<sup>4</sup> requirements are not complied with and collaboration and consultation with the Indian child's tribe does not occur. Throughout this manual ICWA requirements are discussed. A thorough overview of ICWA is provided in Chapter XI.

### **4. Provide Close Judicial Oversight of Abuse and Neglect Cases and Practice One Family/One Judge**

The best practice is that one judge preside over the entire child protection case from the shelter care hearing through permanency, including, where appropriate, adoption. Following a case from start to finish offers the judge an opportunity to see the impact decisions have made on the child, creates the best possibility of ensuring that case plans relate to the specific needs of the child and family, and allows for development of perspective about cases. Judicial monitoring must continue until a permanent home is finalized and the court can close its case. Judges must use the full extent of their authority to protect children and to keep children and other family members safe. Judges must hold all participants in the proceedings, including state and local agencies, accountable to provide reasonable and necessary services to children and families.

In many of Idaho's smaller counties one family/one judge is a necessary reality! The 2001 revisions to the Child Protection Act requiring the filing of petitions to terminate parental rights as a motion in the child protection case is designed to further ensure that our courts move toward the one family /one judge concept. The revisions are aimed at ensuring that the same judge that hears the CPA case will also hear the termination case.

### **5. Provide Competent and Adequately Compensated Representation**

All parties in child welfare proceedings should be adequately represented by well-trained, culturally competent, and adequately compensated attorneys or guardians *ad litem*. Such representation should be available at the earliest opportunity, preferably at the first hearing, but no later than the second hearing after the petition is filed.

### **6. Implement Systems to Gather, Analyze, and Use Information to Improve Court and Child Welfare Processes**

Courts must understand how they are managing their caseloads in terms of numbers, time lines and outcomes for abused and neglected children. They must use technology to create management information systems that can ensure compliance with statutory time limits, track overall compliance with goals, analyze trends, and evaluate the effectiveness of programs and policies. Such systems not only provide important research and evaluative information to help the court improve outcomes for children, but also provide information to

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<sup>4</sup> 25 U.S.C. §§1901, *et seq.*

justify increased resources when needed.

### **7. Engage in Judicial Leadership**

Judges must ensure that their courts provide efficient and timely justice for children and their families. They must ensure that their juvenile and family court system has the capacity to collect, analyze, and report aggregate data relating to judicial performance, including the timely processing of cases to achieve permanency for children under court jurisdiction. Judges must convene and engage the community in meaningful partnerships to promote safety and permanence for children.

### **8. Promote Collaboration with Child Welfare Professionals and the Community**

The court must encourage and promote collaboration and mutual respect among all participants in the child welfare system, including social service agencies, prosecuting attorneys, attorneys for parents, guardians *ad litem*, tribal representatives and staff, community members, court staff, Court Appointed Special Advocate (CASA) volunteers, citizen reviewers, foster parents, and any other relevant participants. Judges must also help the community to understand that child protection is a community responsibility. By regularly convening child welfare professionals, and by regularly appearing in the community to inform the community about the child welfare system and to encourage volunteer participation, judges can set a tone of cooperation and mutual responsibility throughout the professional and private communities in their jurisdictions.

### **9. Recognize Prioritized Preferences for Permanency**

It is critical for judges to understand that foster care is a temporary setting and not a place for children to grow up. If the safety of the child precludes the preferred option for permanency – reunification with the biological parents – is not possible, continuation of foster care is rarely an acceptable alternative. Nor is a living situation with a relative that is not legally secure or permanent an acceptable alternative. When reunification is not appropriate, the next preferred option is adoption by a family with whom the child has a positive existing relationship, such as a relative, foster parent, or adopting family of a sibling. The next preferred option is adoption by a family recruited for the child. A court should consider permanent custody or permanent guardianship as a permanent plan only when adoption has been ruled out or under other exceptional circumstances. In order to meet the definition of permanency, custody or guardianship must provide certain legally secure components.

### **10. Ensure Timely Decision-Making and Placement Stability**

Timely decision-making at all stages of the child protection process, from shelter care through the reunification or implementation of the permanency plan, must be ensured by the courts. The clock is ticking for these children and everything possible must be done to either speed reunification or to provide them with a new permanent home as quickly as possible. Examples of methods to reduce unnecessary delays include:

**Concurrent Planning** – Idaho law requires IDHW to engage in concurrent planning.<sup>5</sup> Such planning is crucial to reduce delays in achieving a child's

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<sup>5</sup> Idaho Code § 16-1617(c). Concurrent planning is defined as “a planning model that prepares for and implements different outcomes at the same time.” Idaho Code § 16-1602(n).

permanency should reunification efforts fail. It is the responsibility of the court to ensure that IDHW is pursuing concurrent planning.

**Alternative Dispute Resolution Techniques** – The court should have alternative dispute resolution processes available to the parties so that trials can be avoided whenever possible and appropriate. Such systems should include family group conferencing, mediation and settlement conferences. These systems expedite sound decision-making and avoid lengthy appeals because they often produce full or partial agreement of the parties.

### **11. Believe in the Adoptability of All Children**

Judges should not use the concern that an adoptive home may not be found for a child as a reason not to move forward with termination of parental rights. Failure to proceed with termination of parental rights in most cases when a child cannot be safely reunified practically ensures that the child will not achieve permanency.

### **12. Consider Adoption with Contact**

This term describes a variety of arrangements that involve the birth family, other individuals who were a positive part of a child's life before entering an adopting home, and the child who now resides with adopting parents. This contact occurs both prior to and after the adoption is finalized. It can range from sending birthday cards to the child or providing pictures to the biological parents (directly or through neutral third parties) to regular visitation. The determining factor as to whether adoption with contact is appropriate must always be the best interests of the child, not the desires of the adults. Adoption with contact recognizes that many children who move into new families through adoption are old enough to have established strong relationships with biological parents, siblings and others and that completely severing these relationships may not be in the child's best interests.

### **13. Provide Expedited Appeals**

An expedited appeals process for cases involving termination of parental rights and adoption is crucial to permanency. Whether accomplished by court rule or by legislation, appellate courts at all levels should give the highest priority to hearing these appeals and issuing final decisions. Idaho Appellate Rule 12.1, adopted by the Idaho Supreme Court in 2002, provides for an immediate permissive appeal to the Idaho Supreme Court from the Magistrate Court in cases involving the custody of a minor, termination of parental rights or adoption if such an appeal is in the best interests of the child.

### **14. Ensure Frequent Review after Termination of Parental Rights to Achieve Timely Adoptive Placements and Timely Adoption Finalizations**

When parental rights have been terminated, the court must commit to frequent review of the case until the child has been placed in an adoptive home and the adoption has been finalized. For the group of children for whom adoptive homes require intensive recruitment, these reviews are critical. Judges must move out of the courtroom and into the community, raising community awareness that these are our children who need new families. Judges must engage the community in the effort to find a permanent home for every child.

### 15. Understand the Need for Post-Adoptive Subsidies and Services

The availability of post-adoptive subsidies and services can be the determining factor in the long-term success of many adoptions of children with special needs. Judges should have a vested interest in the quality, quantity, and accessibility of post-adoptive services available to families who adopt children with special needs.

If the court and child welfare systems are working effectively and following these key principles, children will be less damaged by the uncertainty of their existence and by multiple moves at the point they are legally freed for adoption. The lives of these children will be significantly improved and the number of children who find themselves with parental rights terminated but no new permanent home in sight will be significantly reduced over time.

## C. Case Management

### 1. Judicial Leadership

The Magistrate has the responsibility to protect the rights of parties before the court and ensure safe, permanent homes for abused and neglected children. Among the most pressing judicial concerns in abuse and neglect cases are the principles of treatment, rehabilitation, family preservation, and

**The following are some of the possible bases for a court to revise or overturn agency decisions concerning services, case plans, child placement, interagency disputes, or visitation:**

- ◆ Agency action is contrary to law.
- ◆ Agency recommendations are not in accord with the evidence presented at the hearing. The proposed disposition will not adequately address the abuse or neglect that the court found the parents to have committed.
- ◆ Evidence before the court demonstrates the futility or inappropriateness of action proposed by the agency.

permanency planning. Child protection agencies, service providers, guardians *ad litem* and attorneys all play critical roles in child abuse and neglect cases. For the child welfare system to function in the best interests of children, it is essential that all these major participants discharge their responsibilities in an effective and responsible manner. Ultimately, however, children are placed pursuant to court orders. Therefore, the court has the responsibility to hold the entire system accountable. To discharge this responsibility, the court in child protection cases must have authority commensurate with the task assigned.

The court must insist that the proposed plan or disposition is complete and, when it is not, must direct the agency to respond. The court's oversight role also includes the application of sanctions against parties, who fail to appropriately respond to court orders.

Judicial responsibility for impartiality does not preclude judicial leadership. Judges handling child protection cases can be leaders in their communities, state capitals, and at the national level to improve the administration of justice for children and families. Judges can be active in the development of policies, laws, rules, and standards by which the courts and their allied agencies and systems function. Judges can inform the community of the unique and diverse needs of troubled children and their families. The very nature of the office mandates that the judge act as an advocate and convenor to assure that needed services for children and

families are available and accessible. Judges should encourage the continuing education of all who serve in the juvenile and family court system, including themselves. Professional training topics should encompass cultural competence and gender fairness, as well as interdisciplinary education among all court-related disciplines.

Judges must have the authority by statute or court rule to order, enforce, and review delivery of services and treatment for children and families. The judge must be prepared to hold all participants accountable for fulfilling their roles in the court process and the delivery of services. The judge must oversee the process of determining what services are to be provided to abused and neglected children and their families. The judge must also oversee the determination of where foster children are to be placed, the terms of agency case plans, the resolution of disputes between different public agencies, and the terms of visitation.

### 2. Case Flow Management

Court administrators recently have developed new techniques to reduce litigation delays, collectively known as “case flow management.” Effective case flow management is essential in abuse and neglect cases because it is essential to successful permanency planning. Permanency planning means achieving permanent placements for abused or neglected children within a relatively short period of time, either through their safe return home, or their placement in a new, legally secure permanent home. Sound case flow management by juvenile and family courts is needed to ensure that delays in the court process do not interfere with the timely achievement of permanency. Case flow management also helps the court monitor the agency to make sure the case is being moved diligently and decisively toward completion.<sup>6</sup>

**The following are the basic tools of case flow management:**

- ♦ judicial leadership and commitment;
- ♦ standards and goals;
- ♦ a monitoring and information system;
- ♦ scheduling for credible trial dates; and
- ♦ judicial control of continuances.

**An additional key characteristic of case flow management in child abuse and neglect cases is the use of direct calendaring.**

Time standards implemented through ISTARs (the Idaho Court system’s administrative computing system) for tracking CPA and termination cases are in the process of being re-evaluated. Time standards, although imposed by statute and court rule, are not currently tracked by ISTARs in CPA cases after the order taking jurisdiction of the case. Time standards for post adjudication are being considered. Standards for the handling and joint scheduling of CPA and termination cases are also being considered. In the absence of time standards for post adjudication it is incumbent upon the individual judge to ensure the timely processing of cases.

<sup>6</sup> See M. SOLOMON AND D. SOMERLOT, CASEFLOW MANAGEMENT IN THE TRIAL COURT: NOW AND FOR THE FUTURE (1987); AMERICAN BAR ASSOCIATION, DEFEATING DELAY: DEVELOPING AND IMPLEMENTING A COURT DELAY REDUCTION PROGRAM (1986)



**a) Judicial Commitment and Leadership**

The court must demonstrate an unmistakably strong commitment to timely decisions in child abuse and neglect cases. It must communicate to its own employees, the attorneys practicing before it, and the child welfare agency that timely decisions are a top priority. It must conduct and participate in educational programs concerning the elimination of delays. The court also must make necessary organizational adjustments related to delays, in cooperation with court and agency staff. The court must design explicit processes to ensure timely hearings and must make sure all judges and administrative staff implement them.

**b) Standards and Goals**

Specific and detailed timetables for the different stages of litigation are essential to an effective delay-reduction program. There must be explicit deadlines for shelter care, adjudication, planning, review, and permanency hearings. This manual makes specific recommendations as to each of these hearings. There must be specific deadlines for the initiation and completion of termination of parental rights proceedings. These limits should be incorporated into court rules and made legally binding upon the court. The court should ensure that IDHW staff are informed of the judicial and statutory deadlines for the filing of reports. Serious breaches of court deadlines must be brought to the attention of the administrative judge.

Court staff should operate a computerized data system capable of spotting cases that have been seriously delayed, and capable of measuring court progress in case flow management. This information system should maintain statistics on the length of time from case filing to case closure. The system should also monitor the length of key steps in the litigation, such as petition to adjudication, petition to disposition, and termination of parental rights petition to final written findings of fact and conclusions of law. These statistics should be periodically reported and used to evaluate the effectiveness of case flow management.

**c) Scheduling for Credible Court Dates**

In the great majority of cases, the court should hold hearings on the date that they are originally scheduled. To make this possible, attorneys and parties must understand that trial dates are firm. Pretrial conferences should be routinely scheduled prior to contested hearings to resolve preliminary issues and to arrive at a time estimate for the hearing. Such a pretrial is required by Idaho law, prior to the adjudicatory hearing.<sup>7</sup> There should be no major interruptions in contested hearings. It should be unusual for a contested hearing to be reset to be completed at a later date. The early appointment of counsel and other representation is another important factor in scheduling firm trial dates. Attorneys for parents and children must be present and actively involved in the very first court hearing and all hearings thereafter.

Another way to keep hearings on schedule is to set hearing dates in open court with parties and advocates present to receive a written court order specifying the date and time of the next hearing. The order should also specify actions to be taken by each party, including

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<sup>7</sup> Idaho Code § 16-1615(b). See discussion of the Adjudicatory Pretrial and the Adjudicatory Hearing in Chapter V of this Manual.

social service personnel, and list appropriate timelines. The order should be written in easily understandable language so that all parents and other non-lawyers understand clearly what actions are required before the next hearing.

### **d) Court Control of Continuances**

The court must have a firm and effective policy on continuances. Continuances should not be allowed because hearing dates prove inconvenient for attorneys and parties. Continuances should be granted only when attorneys or parties are ill, essential witnesses cannot be located, or service of process has not yet been completed. Neither should continuances be granted based upon the stipulation of the parties. Administrative personnel should not be authorized to grant continuances. The reason for any continuance should be included in the court record. As the result of these procedures, it should be difficult or impossible to avoid court continuance policies.

One of the results of a firm policy discouraging continuances is better use of judicial resources. With strong policies discouraging continuances, and with pretrial conferences and calendar calls in contested matters, few hearings should need to be rescheduled at the last minute. With a strict policy against continuances and an adequate number of judges, all hearings can be set for a time certain. This includes even the most routine matters such as case review hearings. When cases are set for a time certain, typical waiting time can be less than 20 minutes, with hearings occasionally being delayed up to an hour or more. Reduction of waiting time for agency caseworkers and other witnesses can result in major reductions in government expenditures.<sup>8</sup>

## **D. Access to Competent Representation**

The Magistrate Judge in a child protection case should take active steps to ensure that the parties have access to competent representation. Attorneys and other advocates determine, to a large extent, what information is presented to a judge. Each party must be competently and diligently represented in order for juvenile and family courts to function effectively.

### **1. Attorneys**

Attorneys present information to the court through opening statements, questions, and answers. A judge must receive complete and accurate information in order to make a well-informed decision. This will not occur unless attorneys are competent and diligent. Counsel must thoroughly investigate the case and prepare a list of issues and questions in advance of court hearings to ensure that the judge has complete and accurate information. Much of the initiative for decisions and actions comes from attorneys in the form of motions and petitions. If attorneys fail to take timely action to correct errors or to resolve cases, the quality and time lines of the court's decision-making suffers.

Throughout the United States, there is an extraordinary range in the quality of counsel in child abuse and neglect cases. Even within the State of Idaho, the quality of representation varies greatly. The quality of counsel ranges from the worst inactivity and incompetence

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<sup>8</sup> See MARK HARDIN, HOW TO WORK WITH YOUR COURT: A GUIDE FOR CHILD WELFARE AGENCY ADMINISTRATORS (1993).

(e.g., attorneys who meet their clients only shortly before hearings) to attorneys with a high degree of dedication and skill. Courts have a great ability to positively influence the quality of counsel. Courts can set prerequisites for appointments, including requirements for experience and training. Some courts require attorneys to attend training and "second chair" cases before taking an appointment to a child abuse or neglect case. Some courts have implemented video taped training sessions to speed the eligibility of attorneys for appointments. Courts also can set specific standards for how parents and children should be represented, including the obligation to continue representation through all stages of the case. Courts can impose sanctions for violation of their standards, which might include the termination of an attorney's appointment to represent a specific client, the denial of further appointments, or even fines or referral to the Bar committee for professional responsibility.

The court can play an important role in training attorneys in child abuse and neglect cases. Judges and judicial officers can volunteer to provide training and publications for continuing legal education seminars. Before becoming involved in an abuse and neglect case, attorneys should have the opportunity to assist more experienced attorneys in their jurisdiction. They should also be trained in, or familiar with:

- ◆ legislation and case law on abuse and neglect,
- ◆ foster care, termination of parental rights, and adoption of children with special needs,
- ◆ the causes and available treatment for child abuse and neglect,
- ◆ the child welfare and family preservation services available in the community and the problems they are designed to address,
- ◆ the structure and functioning of the child welfare agency and court systems,
- ◆ the services for which the agency will routinely pay; and the services for which the agency either refuses to pay or is prohibited by state law or regulation from paying.

Local experts who can provide attorneys with consultation and testimony on the reasonableness and appropriateness of efforts made to safely maintain the child in the home must be available.

After attorneys are assigned or retained on an abuse and neglect case, they should do the following:

- ◆ Actively participate in every critical stage of the proceedings, including but not limited to hearings on adjudication, disposition, periodic case review, permanency planning, termination of parental rights, and adoption.
- ◆ When necessary to protect the interests of the client, the attorney should introduce and cross examine witnesses, file and argue motions, develop dispositional proposals for the court, and file appeals.
- ◆ Thoroughly investigate the case at every stage of the proceedings. Attorneys should know, among other things, the family's prior contacts with the child welfare agency; who made the decision to bring the case to court; the basis for state intervention, including the specific harm state intervention is supposed to prevent; and what alternatives, including voluntary in-home services and placement with relatives, were considered prior to initiating court proceedings.

- ◆ If the child has been removed from the home, determine what contacts the agency has since made with the parents and the child, and what efforts were made to reunify the family prior to the preliminary protective hearing.
- ◆ Conduct a full interview with the client to determine what involvement, if any, the child welfare agency has had with the parent or child; what progress the parents and child have made; and what services the client (parent or age-appropriate child) believes would be helpful. In preparation for such proceedings as adjudication, disposition, periodic review, and termination of parental rights proceedings, interview key witnesses including child welfare agency personnel, key service providers to the child and family, representatives of other key agencies, and others with knowledge of the case.
- ◆ Review all documents that have been submitted to the court.
- ◆ Review the agency's file and any pertinent law enforcement agency reports to evaluate the case and to ensure that the agency has complied with its own procedures and regulations.
- ◆ Obtain or subpoena necessary records, such as school reports, medical records and case records.
- ◆ When necessary arrange for independent evaluations of children or parents.
- ◆ Stay in regular contact with clients, writing letters and making telephone calls when necessary and using tickler files.
- ◆ Continue to remain in contact with the agency and monitor case progress between court hearings.

### **2. Guardians *ad Litem*/Court Appointed Special Advocates (GALs/CASAs)**

Recent legislative developments have recognized children's need for independent representation in dependency proceedings. The Child Abuse Prevention and Treatment Act of 1974 required states receiving federal funds for the prevention of child abuse and neglect to provide a guardian *ad litem* (GAL) for every child involved in such proceedings. Idaho law requires that a guardian *ad litem* be appointed for the child in a child protection case.<sup>9</sup> The court must also appoint an attorney for the guardian. If no guardian is available, Idaho law requires that an attorney be appointed for the child. Most counties in Idaho appoint trained citizen volunteers as GALs, through the Court Appointed Special Advocates ("CASA") program. CASAs are specially screened and trained volunteer guardians *ad litem* (GALs) appointed by the court to speak up for the best interests of abused and neglected children. They review records, research information, and talk to everyone involved in the child's case. They make recommendations to the court as to what is best for the child and monitor the case until it is resolved. Both trained volunteers and attorneys must play a significant role in providing GAL representation for children. In jurisdictions where there is role conflict and confusion, there should be joint efforts to clarify and define mutual responsibilities. Juvenile and family courts must continue to examine methods of using both volunteers and attorneys to improve the representation of children involved in dependency proceedings.<sup>10</sup>

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<sup>9</sup> Idaho Code § 16-1612

<sup>10</sup> Rebecca H. Heartz, *Guardians Ad Litem in Child Abuse and Neglect Proceedings: Clarifying the Roles to Improve Effectiveness*, 27 FAM. L. Q. 127 (1993).

**E. Voluntary Agreements for Services and/or Care**

Idaho law allows parents to enter into voluntary agreements with IDHW for the temporary placement of a child in foster care or for the delivery of services to the family and the child while the child remains in the home. These agreements, which are entered into prior to court involvement, are often referred to as voluntary agreements for care or for services. Voluntary agreements can serve useful purposes. They can provide a way for the department to deliver early intervention services to a family in an effort to avoid removing a child from the home. In cases where a short-term placement is necessary for a defined purpose, such as when a parent enters inpatient hospital care, a voluntary agreement can allow the temporary placement of a child without unnecessarily involving the court and expending its scarce resources. Voluntary agreements can provide a method of immediately placing children in foster care with parental consent prior to initiating court involvement. This can avoid the need for emergency removal.

Voluntary agreements, however, can be misused. Without proper safeguards on voluntary agreements, agencies can place children for extended periods without court involvement, thus circumventing court review of agency efforts. Voluntary agreements also can be misused to place children in foster care under circumstances where the agency lacks sufficient cause to seek court-ordered placement of the child. To prevent misuse of voluntary agreements, IDHW regulations provide that a voluntary agreement for out-of-home-placement should not last more than 180 days. Voluntary agreements should be used judiciously, and all voluntary agreements should be time limited. The agreements should automatically expire after a short, defined period of time, and should be extended only with the agreement of all parties to the agreement. Voluntary agreements should be used only when it is apparent that each involved parent was a full and able participant in the agreement process.

A voluntary agreement should always be in writing and on the appropriate IDHW form that explains the parents' rights: the right to reasonable visitation with the child; the right to be consulted on decisions regarding the child's care and placement; and the right to revoke the agreement upon proper notice to the agency. IDHW's regulations require it to prepare a service plan whenever a child is placed pursuant to a voluntary agreement. The case plan should provide, at a minimum, each treatment goal that must be achieved for during the course of the agreement including, the commitments to be made by the family, the services to be provided, and the terms of contact and/or visitation. If the goals of the plan are not met within 180 days, a child protection action should be initiated. To prevent misuse of voluntary agreements, judges should review each agreement when cases involving them become active with the court. If a judge notices a pattern of misuse of voluntary agreements, he or she can seek corrective action by bringing the problem to the attention of appropriate administrators within IDHW. If a child has been placed inappropriately pursuant to a voluntary agreement, a judge may find (when appropriate) that the agency failed to make reasonable efforts to prevent or eliminate the need for placement of the child.

### **F. Emergency Orders**

Idaho law allows the removal of an allegedly abused or neglected child prior to issuance of a court order.<sup>11</sup> The provision is applicable in emergency situations where it may be necessary to take steps to protect a child at or even before the beginning of litigation. It may be necessary to immediately remove a child from home or to expel from the home a parent who is alleged to have abused or neglected the child. While quick and decisive action is sometimes necessary for the protection of the child, it can have a drastic impact on the family. Precipitous and unplanned removal of a child from home or forcible removal of a parent is always traumatic. Once such action is taken, it is difficult to reverse. First, the court must act quickly to ensure protection of the child. Second, the court must provide prompt procedural protection for parents, consistent with the safety of the child. Third, it must move proceedings forward as quickly as possible. Fourth, the court must make as careful and considered a decision as emergency circumstances allow.

When a child is removed because law enforcement officials have determined that the child is in imminent danger, a notice of police action is left at the child's home and/or with the child's parents. This notice should provide information to the parents about how to contact the court, and, where possible, should contain information about the shelter care hearing schedule and the parent's right to counsel.

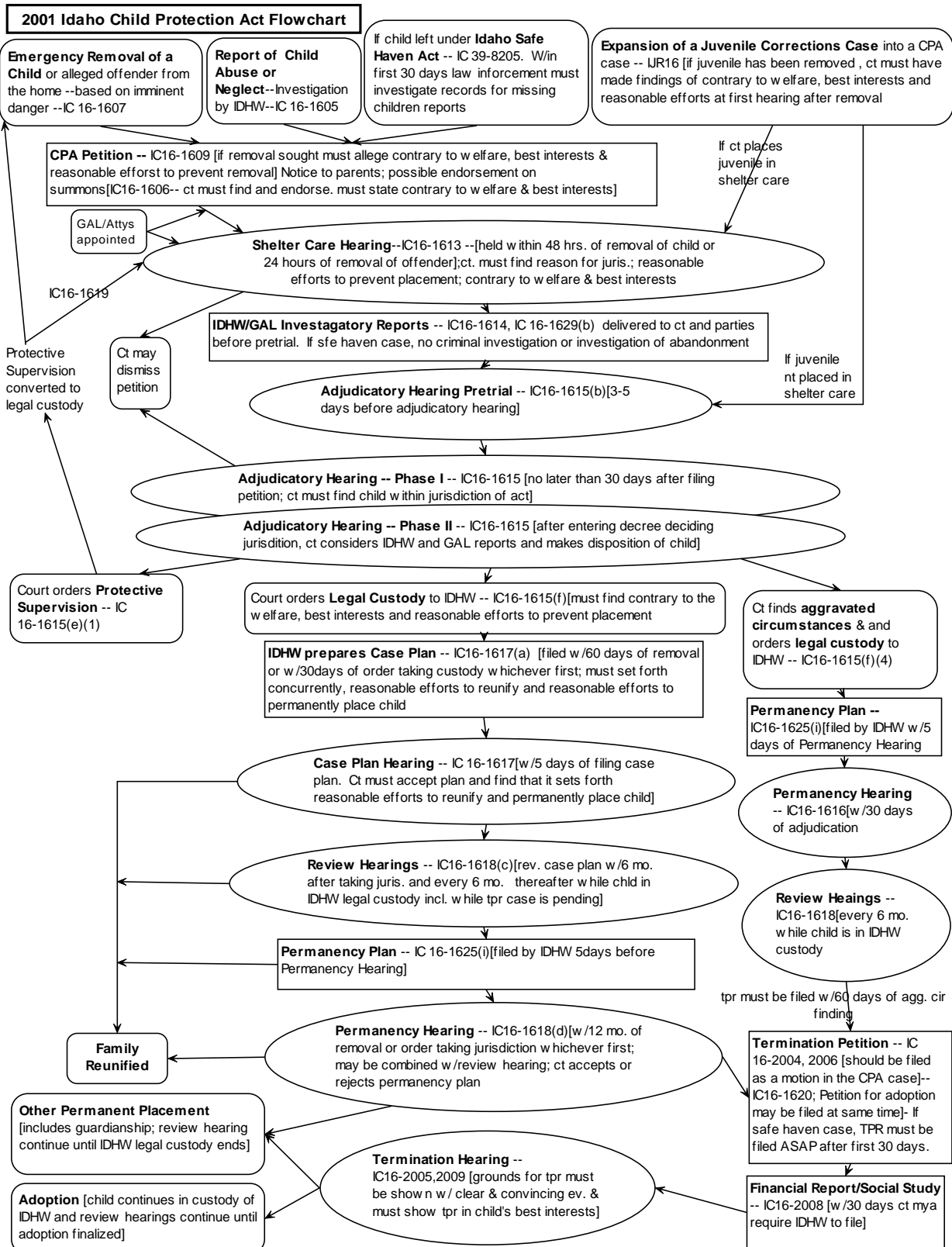
Idaho law requires that a shelter care hearing be held within 24 hours of the removal of an offender from the home and within 48 hours of the removal of a child.

### **G. Overview of Idaho Child Protective Act Case**

The following flowcharts and discussion provide an overview of a child protection case in Idaho from start to finish. Each step in the case process is detailed in the chapters of this manual, complete with recommended hearing scripts, forms, and checklists. If at any point in the process, the court determines that the child is an Indian Child under ICWA, the separate flowchart for ICWA cases should be followed.

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<sup>11</sup> Idaho Code § 16-1607(2).



## 1. Reporting and Investigation

A child protective act case can be initiated several different ways in Idaho. A report of child abuse or neglect may be made to the local law enforcement officials or the Department of Health and Welfare. When this happens, generally an investigation is initiated by IDHW pursuant to Idaho Code § 16-1605. Law enforcement officials may remove a child from her or his home on an emergency basis while investigating a criminal complaint because they determine that the child is in imminent danger. Idaho Code § 16-1607. A child protection case also begins when a child is abandoned under the Idaho Safe Haven Act. Idaho Code §§ 39-8202 to 8207.

A child protection case may also be initiated when a Juvenile Corrections Act proceeding is expanded by the judge pursuant to Idaho Juvenile Rule 16.

Chapter II of this manual deals with the reporting and investigation stages of a CPA case. The chapter outlines the approach taken by IDHW in investigating a CPA case and reviews the protocols and instruments used by IDHW in evaluating a case. The chapter also reviews the law enforcement materials relating to law enforcement response to allegations of abuse and neglect and law enforcement investigations of abuse and neglect.

## 2. Initiating the Case

In cases involving emergency removal or investigation of a report of abuse, the case is immediately referred to the local prosecutor's office or to the deputy attorney general assigned in some counties to handle child welfare issues and a petition and summons are prepared pursuant to Idaho Code §§ 16-1609 and 16-1610. Such a referral also occurs when a child is abandoned pursuant to the Safe Haven Act. The petition must allege:

- ◆ the facts which bring the child within the jurisdiction of the act – that the child has been the victim of abuse or neglect, is homeless, or is residing in an unstable home environment;
- ◆ the name, birthdate, sex, and residence of the child;
- ◆ the names, birthdates, sex, and residences of all the other children living at or having custodial visitation at the home where the alleged injury to the child occurred;
- ◆ the names and addresses of the child's parents, guardians, or other custodians;
- ◆ if the parents, guardians, or custodians cannot be found in the state of Idaho, the names and addresses of any adult relative of the child found within the state;
- ◆ the existence of any legal document such as a divorce decree, custody decree, stipulation, or parenting agreement controlling the custodial status of the child, the terms of the child's custodial status as well as whether parent(s) having custody under such a decree or order have been notified of the child's placement;
- ◆ whether the child is in shelter care and the facts and circumstances of that care.

If the child has been or will be removed from the home, pursuant to Idaho Code § 16-1609(b)(9), the petition must also contain the following allegations:

- ◆ that remaining in the home was contrary to the welfare of the child;
- ◆ that vesting custody of the child with IDHW would be in the child's best interests; and



- ◆ that reasonable efforts have been made to prevent removal of the child from her home or that reasonable efforts to prevent placement were not required because the parent subjected the child to aggravated circumstances.

If relevant to the particular case, pursuant to Idaho Code § 16-1615(f)(4), the petition should also contain allegations of aggravated circumstances:

- ◆ that the parent subjected the child to abandonment, torture, chronic abuse, sexual abuse;
- ◆ that the parent committed murder or voluntary manslaughter; that the parent aided, abetted, attempted, conspired, or solicited to commit murder or voluntary manslaughter;
- ◆ that the parent committed a felony assault that resulted in serious bodily injury to a child of the parent; or
- ◆ that the parental rights of the parent to a sibling have been involuntarily terminated.

Three types of relief can be sought in the petition: protective supervision, legal custody in IDHW, or legal custody in IDHW after a finding of aggravating circumstances.

If the child has not yet been removed from the home pursuant to the emergency removal provisions of the act, but remaining in the home is determined to be contrary to the child's welfare and removal is in the child's best interest, an endorsement may be placed on the summons permitting the removal of the child from the home pursuant to Idaho Code § 16-1610(d). In ordering an endorsement on the summons, the court must find and the endorsement must state that (1) continuation of the child in her or his present condition or surroundings is contrary to the welfare of the child, and (2) that custody with IDHW would be in the child's best interests.

Chapter III of this manual deals with initiating a CPA case. In addition to covering the petition and endorsement on summons, Chapter III also covers service of process, notice, the initial role and appointment of the Court Appointed Special Advocate (CASA) and/or attorney for the child, and appointment of attorneys for indigent parents.

As mentioned earlier a child protective act action may be initiated under Rule 16 of the Idaho Juvenile Rules, when a court sitting in a Juvenile Corrections Act case grants a motion expanding the case to a child protection action. Chapter II will also cover the Rule 16 expansion process.

### **3. Shelter Care**

Where the child has been abandoned pursuant to the Safe Haven Act or has been removed from the home pursuant to the emergency removal provisions of the CPA act, pursuant to an endorsement on the summons, or pursuant to the court's order under I.J.R. 16, the case must proceed to a shelter care hearing pursuant to Idaho Code § 16-1613. In addition, where an offending parent has been removed from the home, the case must also proceed to the shelter care hearing. This hearing must be held within 48 hours of the removal of an of the child from the home and within 24 hours of the removal of an offender from the home.

If GALs and attorneys have not been appointed, such appointments will be made at the

shelter care hearing.

At the shelter care hearing, the court may order that the child remain in the temporary legal custody of IDHW, if it finds that:

- ◆ a petition has been filed;
- ◆ there is reason to believe the child comes within the jurisdiction of the act;
- ◆ reasonable efforts to prevent placement of the child in shelter care could not be provided because of immediate danger to the child or reasonable efforts to prevent placement of the child were made and were unsuccessful;
- ◆ the child could not be placed in temporary sole custody of a parent having joint legal or physical custody;
- ◆ it is contrary to the welfare of the child to remain in the home;
- ◆ it is in the best interests of the child to remain in the temporary custody of IDHW pending the adjudicatory hearing;
- ◆ reasonable efforts to prevent placement could be affected by a protective order safeguarding the child's welfare and maintaining the child in her present surroundings.

If the evidence does not support the finding that temporary legal custody should be placed in IDHW, the court may dismiss the petition or permit the case to go forward but allow the child to remain in her home.

Chapter IV of this manual will cover the shelter care hearing and the roles of the judge, attorneys and GALs at that hearing. It will also cover issues regarding voluntary stipulations.

#### **4. Adjudication**

Within thirty days after the filing of the petition the court must hold an adjudicatory hearing. Three to five days before the adjudicatory hearing, a pretrial out of the presence of the court is held. Idaho Code § 16-1615.

During the days leading up to the adjudicatory hearing pretrial, the CASA and IDHW prepare investigatory reports. Those reports must be filed with the court and delivered to the parties before the pretrial. Idaho Code §§ 16-1614, 16-1629.

The adjudicatory hearing is a two phase process. In Phase 1 of the adjudicatory hearing, the court must first determine that the child comes within the jurisdiction of the act. This finding must be based on a preponderance of the evidence that the child is abandoned, neglected, or abused by her parents, guardian or other legal custodian; that the child is homeless; or that the child's parent or other legal custodian has failed to provide a stable home environment. The court's findings and the facts upon which they are based must be made on the record.

If the court does not find that it has jurisdiction, the petition is dismissed. If, however, the court finds that jurisdiction exists, the court should proceed to the second phase of the adjudicatory hearing to consider information relevant to the disposition of the child including the investigatory reports of the CASA and IDHW.

In considering the disposition of the child, the court may order that the child remain in the home under the protective supervision of IDHW, or it may order that legal custody be vested in IDHW.

Finally, in considering the disposition of the child, the court may find that reasonable efforts to prevent placement of the child in foster care are not required based on the courts finding of aggravating circumstances.

The adjudication and disposition process, including the investigatory reports by the CASA and IDHW, the adjudicatory pretrial and the hearing itself will be discussed in Chapter V of this manual.

### **5. The Planning Hearing**

Once the adjudication is completed, the case plan serves as the roadmap for the case. It is through the case plan that concurrent planning for the child will be carried out. The plan must detail both the reasonable efforts that will be made to reunify the child with her family and the reasonable efforts that will be made to achieve a permanent placement for the child. Idaho Code § 16-1617.

Idaho Code § 16-1617(a) requires that the plan must be filed with the court within sixty days of the child's removal from the home or within 30 days of the court's order taking custody of the child, whichever comes first. Within five days of filing the plan with the court, the court must hold a planning hearing. At the planning hearing, the court must decide whether to accept, reject, or modify the case plan. Idaho Code § 16-1617(d). Once the case plan is approved by the court, it is entered into the record of the case as the court's order.

While the child is in the custody of IDHW, the court must conduct a review of the case plan and the progress made toward both reunification and permanency every six months.

Chapter VI of this manual will discuss the case plan, the planning hearing, and the review hearings.

### **6. The Permanency Plan and Hearing**

The Court must hold a hearing twelve months from the date the child is removed from the home or the date of the court's order taking jurisdiction, whichever occurs first. Idaho Code § 16-1618. Five days prior to the permanency hearing, the department must file its permanency plan. Idaho Code § 16-1625(i).

If the court finds that the child was subjected to aggravated circumstances, no case plan is required. The court must instead hold a permanency hearing within 60 days pursuant to Idaho Code §16-1616

The permanency plan is the document containing the department's final recommendations regarding the possibility of reunifying the child with the family and regarding the department's recommended permanent placement of the child.

Generally, if the department's recommendation is against reunification, a petition to terminate parental rights will be filed in the case at this time. The Idaho Code provides a rebuttable presumption that if the child has been placed in out-of-the-home care for more than fifteen of the last twenty-two months, the department must initiate an action to terminate parental rights. The presumption may only be rebutted by establishing that termination would not be in the child's best interests or by showing that reasonable efforts have not been made toward reunification. Idaho Code § 16-1625(i).

The permanency plan and hearing will be discussed in Chapter VII of this manual. Chapter VII will also discuss permanency options such as adoption, guardianship, long-term foster care, kinship care and independent living.

### **7. Review Hearings**

While the child is in the legal custody of IDHW, review hearings must be held every six months. Idaho Code § 16-1618(c). Chapter VIII covers these review hearings.

### **8. Termination of Parental Rights**

One of the overriding goals of the Child Protection Act is permanency for children. Generally, once a court determines that reasonable efforts to achieve reunification have been made and have failed, the process to terminate parental rights and move to a permanent placement should be made. The termination petition must be filed as motion in the child protective act proceeding. Idaho Code § 16-1620. If an infant has been abandoned or if the court has made a finding that reasonable efforts to reunify the family are not required because of aggravated circumstances, the petition to terminate parental rights should be initiated within 60 days of the abandonment or of the finding of aggravated circumstances.

The termination of parental rights process will be covered in Chapter IX of this manual.

### **9. Adoption**

A number of issues surrounding adoption arise in the context of child protection. Chapter X of this manual will discuss multiethnic placement, adoption recruitment, instate jurisdiction, adoption assistance, post-adoptive subsidies and adoption assistance agreements.